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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO PRIORITY

UNCLAS STATE 028822

E.O. 12065: N/A

TAGS: ETRD. PGOV. EINV. JA

SUBJECT: FOREIGN MINISTRY INTEREST IN DISCRIMINATION CASE
LISA M. AVIGLIANO, ET AL., AGAINST SUMITOMO SHOJI AMERICA,
INC.

FOLLOWING AS A REPEAT TOKYO 13800

QUOTE R 030643Z AUG 79

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 0320

UNCLAS TOKYO 13800

E.O. 12065: NA

TAGS: ETRD, PGOV, EINV, JA

SUBJECT: FOREIGN MINISTRY INTEREST IN DISCRIMINATION CASE
LISA M. AVIGLIANO, ET AL., AGAINST SUMITOMO SHOJI AMERICA,
INC.

1. SUMMARY: THE FOREIGN MINISTRY HAS ASKED THE EMBASSY FOR INFORMATION ABOUT AN OCTOBER 17, 1978 LETTER FROM DEPUTY LEGAL ADVISOR LEE R. MARKS TO ABNER W. SIBAL.

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GENERAL COUNSEL OF THE EQUAL OPPORTUNITY COMMISSION, IN
CONNECTION WITH A SUIT BY LISA M. V. GLIANO ET AL. AGAINST
SUMITOMO SHOJI AMERICA, INC. END SUMMARY.

2. IN THE SUIT AVIGLIANO ET AL. APPARENTLY ASSERTED THAT SUMITOMO FILLED ALL OF ITS EXECUTIVE POSITIONS WITH JAPANESE MALES AND THUS DISCRIMINATED AGAINST THE PLAINTIFFS, ALL OF WHOM ARE WOMEN. SUMITOMO ARGUED THAT ARTICLE VIII OF THE U.S.-JAPAN TREATY OF FRIENDSHIP AND NAVIGATION PERMITTED THE COMPANY TO EMPLOY "ACCOUNTANTS, ATTORNEYS, AGENTS AND OTHER SPECIALIST OF THEIR CHOICE." IN HIS LETTER TO SIBAL, MARKS WROTE, "THE PHRASE 'OF THEIR CHOICE' SHOULD BE INTERPRETED TO GIVE EFFECT TO THIS INTENTION, AND WE THEREFORE BELIEVE THAT ARTICLE VIII (1) PERMITS U.S. SUBSIDIARIES OF JAPANESE COMPANIES TO FILL ALL OF THEIR 'EXECUTIVE PERSONNEL' POSITIONS WITH JAPANESE NATIONALS ADMITTED TO THIS COUNTRY REATY TRADERS." LATER IN THE LETTER MARKS STATED THAT THE FACT THAT SUMITOMO SHOJI AMERICA, INC. WAS INCORPORATED IN THE

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DEPARTMENT OF STATE A/CDO/INR
REMOVED BY W. Bell DATE 9-20-80
RDS ☐ or XES ☐ EXT. DATE _____
ITS AUTH. _____
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UNITED STATES DID NOT REMOVE IT FROM THE TREATY'S
PROTECTION.

3. IN A JUNE 5, 1979 DECISION, JUDGE CHARLES H. TENNEY
OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK UPHOLD THE PLAINTIFFS' COMPLAINT
UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1974.

4. SUMITOMO JAPAN IS SEEKING SUPPORT FROM THE FOREIGN
MINISTRY WHICH HAS DENIED IT SO FAR BECAUSE THE
MINISTRY CONSIDERS COMPANIES, LIKE SUMITOMO SHOJI
AMERICA, INC., INCORPORATED UNDER U.S. LAW TO BE U.S.
COMPANIES NOT ENTITLED TO THE PROTECTION OF THE JAPANESE
GOVERNMENT. SUMITOMO HAS USED THE MARKS LETTER TO

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ARGUE THAT THE FOREIGN MINISTRY'S POSITION IS INCORRECT.

5. THE FOREIGN MINISTRY HAS ASKED THE EMBASSY FOR AN
ELABORATION OR THE REASONS FOR THE POSITION THE DEPART-
MENT TOOK IN THE MARKS-SIBAL LETTER. THEY PARTICULARLY
WOULD LIKE TO KNOW WHAT PRECEDENTS AND POLICY FACTORS
WERE CONSIDERED.

6. REQUEST THE DEPARTMENT PROVIDE THIS INFORMATION BY
TELEGRAM AS SOON AS POSSIBLE. THE EMBASSY WOULD ALSO
APPRECIATE ANY INFORMATION AVAILABLE ON THE PRESENT
STATUS OF THE CASE IN THE COURTS, I.E. HAS THE DECISION
BEEN APPEALED.

SHERMAN END QUOTE. HAIG

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